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4 April 1978

MEMORANDUM FOR THE RECORD

FROM : [REDACTED]
Assistant Legislative Counsel

SUBJECT: Senate Select Committee on Intelligence Hearing on Charter
Legislation

1. The Senate Select Committee on Intelligence (SSCI) opened its hearing today on S. 2525. Senator Birch Bayh chaired the hearing; other Committee members present for all or part of the hearing were: Barry Goldwater, Adlai Stevenson, Walter Huddleston, Robert Morgan, Charles Mathias, and John Chafee. Numerous Committee members present included: William Miller, Patrick Norton, Keith Raffenel, John Elliff, Jean Evans, and Walter Ricks. Also, Mr. Elliot Maxwell, former member of the Committee staff, was present. Present on behalf of the DCI were the undersigned and [REDACTED] OLC, and [REDACTED] OGC. The sole witness was Mr. Clark Clifford.

2. Senators Bayh and Huddleston, in their opening remarks, emphasized that S. 2525 is an agenda for congressional consideration of, and public debate on, intelligence. Senator Huddleston identified three tasks that must be addressed in the context of S. 2525: whether the authorized activities are sufficient, whether the mechanism to ensure against abuse are reasonable, and whether the organization apparatus strikes the proper balance between centralization and diversity.

3. Mr. Clifford began his testimony by presenting background on his experience with intelligence and particularly his role in development of the existing charter. In discussing the National Security Act of 1947, as amended, Mr. Clifford emphasized that the "catch all" provision--section (d)(4)-- was intended to provide flexibility for circumstances that could not be anticipated. In this regard, Mr. Clifford went on to explain that, in his opinion, it was this provision of the charter that has led to abuse in conducting covert action activities that probably were not contemplated either by Congress or the Executive in developing the 1947 Act. Mr. Clifford made the further point in regard to covert action that the National Security Council was not equipped to perform thorough oversight of the intelligence apparatus, particularly the covert action facet. Finally, Mr. Clifford said that in his view Congress over

the years has shied away from exercising its proper oversight rôle, especially in failing to enact new legislation to replace the existing charter.

4. The more interesting of Mr. Clifford's remarks on S. 2525 were:

--The bill must remove the ambivalence under which intelligence officers now have to operate.

--The legislation must, in authorizing collection, recognize the continued need for human collection.

--The legislation must provide for a continued covert action capability, but the criteria according to which such activities would be implemented should properly require a Presidential finding and prior notification to the oversight committees.

-- The legislation should not prohibit specific types of activities (e.g., assassination, "violent overthrow of democratic governments," and assistance to security forces that violate human rights), since among other things, inclusion of specific prohibitions arguably implies authorization of all other activities not explicitly prohibited.

--Mr. Clifford strongly endorsed the concept of notifying the oversight committees in advance of covert action, noting that the President would retain the right to authorize such activities even if the committee(s) objected and the Congress could always legislate limitations on activities (e.g., assistance to

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--Mr. Clifford suggested that the covert action capability "organizational identity" be separated completely from the CIA.

--Finally, Mr. Clifford recommended that the DNI be separated from the CIA, in order to emphasize the DNI's independence and to clarify lines of authority from the Intelligence Community to the President.

5. Following Mr. Clifford's remarks, several Senators asked follow-up questions. Many of these questions and answers concerned provision of information to the oversight committees. Mr. Clifford recognized the sensitivity of information concerning covert action, but conceded that the importance of Congress' right to be informed must be paramount. Mr. Clifford

emphasized that the important aspect of the legislation, as it concerns prior notification to Congress, is that the oversight committees be afforded the opportunity to make their recommendations to the President. Mr. Clifford, in response to questions from Senators Chafee and Stevenson, said that in his opinion the oversight committees should have the right to request from the Executive any and all information relating to intelligence; it would then be up to the President to make the case for not providing particularly sensitive information. Mr. Clifford stated also, however, that he did not believe the statute should require the Executive to inform the oversight committees of all intelligence activities; but he did state very clearly that the committees had a right to request any intelligence information. ✓

6. Although Mr. Clifford did not discuss specifics, he indicated S. 2525 could be shortened and tightened up considerably and that the bill was perhaps too detailed; he cautioned against attempting to provide for every single contingency. Finally, in response to questions by Senator Mathias, Mr Clifford endorsed the concept of a non-governmental body such as the IOB, to provide external review and oversight of intelligence activities. The discussion ended with Mr. Clifford recommending that the committee pay very close attention to the dangers of terrorism (in the context of a counterintelligence capability), and that the committee recognize that the effectiveness of the entire intelligence process will depend to a large extent on effective relationships between the President, the DNI and the oversight committees.

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